

MONTGOMERY COUNTY, STATE OF MARYLAND

Vikram S. Kushawaha
11313 Classical Lane
Silver Spring, MD 20901

Complainant

vs.

Stonehedge Condominium Association
c/o David King, The Management Group
Associates, Inc., Managing Agent
20440 Century Boulevard, Suite 100
Germantown, MD 20874

Respondent

Panel Chair Memorandum By: John F. McCabe, Jr. :

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: COMMISSION ON COMMON
: OWNERSHIP COMMUNITIES
:
: Case No. 05-811-0
:
: Panel Hearing Date: May 10, 2006
: Decision Issued: July 18, 2006

MEMORANDUM DECISION AND ORDER

The above captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on May 10, 2006, pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record, and finds, determines and orders as follows:

BACKGROUND

This is a complaint filed by a unit owner of a condominium on August 29, 2005 against the Condominium. The Complainant claims that the Board of Directors of the Condominium failed to conduct properly the election for the Board of Directors at its 2005 annual meeting. Specifically, the Complainant claims that the Condominium wrongfully invalidated forty (40) proxies the Complainant submitted on June 7, 2005, the rescheduled date for the annual meeting originally set for May 4, 2005. The Complainant also raised issues related to the counting of

proxies and other matters concerning the conduct of the 2004 Board election, but the evidence produced did not establish any improper action regarding the 2004 Board election. Therefore, the panel makes no findings or decision regarding the 2004 Board election. The Complainant also contended at the hearing that the Respondent failed to provide requested documents as required by the discovery rules under Section 10B.06.01.04 of the Code of Montgomery County Regulations (COMCOR) and by the Maryland Condominium Act.

FINDINGS OF FACT

1. The Complainant owns seven (7) units in Stonehedge Condominium Association. His wife owns one (1) unit. His wife is not a party to these proceedings.
2. The Respondent Stonehedge Condominium Association is a condominium created under the Maryland Condominium Act consisting of 234 units.
3. In the 2005 election for the Board of Directors, there were two positions available, one for a three-year term and one for a one-year term. The Board of Directors consists of five directors.
4. The Condominium gave notice on March 15, 2005, and again on April 22, 2005, to

the members that the annual meeting for the election of directors, and other business, would be conducted on May 4, 2005. Neither notice contained the statement required by Real Property, Annotated Code of Maryland, Section 11-109(c)(8)(ii). The statute states:

“If the number of persons present in person or by proxy at a properly called meeting of the council of unit owners is insufficient to constitute a quorum, another meeting of the council of unit owners may be called for the same purpose if:

1. The notice of the meeting stated that the procedures authorized by this paragraph might be invoked; and
2. By majority vote, the unit owners present in person or by

proxy call for the additional meeting.”

5. A quorum for a membership meeting of the Condominium is members representing

25% of the total voting interests entitled to be cast. (Article IV, Section 5, By-laws Stonehedge Condominium Association.) Each member has the right to cast one vote (Article IV, Section 8). Since the Condominium has 234 units, a quorum for a membership meeting is therefore the presence in person or by proxy of 59 members.

6. The Condominium failed to achieve a quorum at the May 4, 2005, meeting. A second

meeting was therefore scheduled for June 7, 2005. It is unclear whether the members who were present voted to adjourn the May 4, 2006, meeting to June 7, 2005, as required under Article IV, Section 6 of the By-laws and as would have been required under Section 11-109(c)(8)(ii)2. However, the June 7, 2005, meeting was scheduled, and the Condominium sent notice to the members dated May 9, 2005. Complainant's Exhibit 5.

7. The May 9, 2005, notice stated that those in attendance at the June 7, 2005, meeting

would constitute a quorum. The Condominium thus attempted to invoke the process in Section 11-109(c)(8). However, as will be discussed later, the necessary statutory notice of the first meeting was not given. Therefore, the Condominium could not avail itself of that process.

8. At the June 7, 2005, meeting, 42 members were present in person or by proxy. Since

the Condominium had not properly followed Section 11-109(c)(8) Real Property Article, in

order to have a valid meeting it would have had to have a quorum, namely 59 members, present in person or by proxy. Therefore, the June 7, 2005, meeting could not be constituted as a proper meeting.

9. The Condominium's By-laws provide for the use of proxies. Article IV, Section 8.

In accordance with the By-laws, "...the proxy must be submitted to the Secretary prior to the meeting....".

10. Notwithstanding the foregoing requirements of the By-laws, David King, the Manager for the Condominium testified that the practice of the Condominium at its annual meetings has been to call the meeting to order, request proxies, call for nominees, accept ballots from those present, and then collect and count the proxies and the ballots to determine the outcome of the election.

11. For the 2005 election, there were four candidates for two positions. They were Kelly Carter, who was identified on the proxies mailed out by the Condominium with the notices of the May 4, 2005, meeting, and three persons nominated from the floor, on June 7, 2005, Millicent Grant, Neville Wellington, and the Complainant. Neville Wellington withdrew from the election at the June 7, 2005, meeting.

12. The Condominium had 14 people present in person on June 7, 2005, and 34 people present by proxy. Of the 34 proxies, 6 were invalidated. This left a total of 42 people present in person or by proxy.

13. On June 7, 2005, the Complainant attempted to submit 40 proxies voting for him. The Condominium rejected those proxies because they were submitted after the meeting had started. All of the other proxies allowed had been submitted prior to the May 4, 2005, meeting.

14. The By-laws of the Condominium provide that the person receiving the most votes will receive the longest term, the person receiving the next most votes will receive the next longest term, and so forth, in accordance with the number of people running for director. It appears from the evidence and testimony of record that had the Condominium accepted the Complainant's proxies on June 7, 2005, he would have received the most votes and would have won a three-year term on the Board of Directors.

15. The testimony as to when the Complainant submitted his proxies is inconsistent. The Complainant states that he submitted his proxies immediately after the beginning of the meeting at the first call for proxies. David King, the Manager of the Condominium, states that the Complainant did not submit his proxies until after the ballots had been collected. David King stated that the meeting started at 7:00 p.m. and that the Complainant did not submit his proxies until 7:45 p.m.

16. Both parties presented testimony regarding the document requests by the Complainant. The parties attempted to engage in informal discovery in accordance with COMCOR Section 10B.06.01.04 and in informal requests for documents as allowed under the Maryland Condominium Act. From the testimony of the witnesses, it was apparent to the panel that the Condominium and its management considered the Complainant to be something of a

nuisance. It also appears that the Condominium made the provision of documents difficult for the Complainant and his attorney. One set of documents was delivered to counsel for the Complainant during the May 10, 2006, hearing. It also was apparent to the panel that this contention did not arise between the attorneys for the parties. The attorneys appeared to have a professional and cooperative relationship.

17. The Condominium did not present testimony from any member or from any of its directors or officers, and no member, director or officer was present at the hearing on behalf of the Condominium.

18. The Condominium had no formal report from an election committee or officers at the election and no formal account of the results of the election. When the panel requested the number of persons present in person or by proxy on June 7, 2005, for example, the Condominium's witness had to calculate that amount before the panel by examining the membership lists, ballots and proxies that had been submitted into evidence.

19. Counsel for Complainants submitted as Complainant's Exhibit 19 a statement of legal services rendered. The amount was \$1,500.00 based on an hourly rate of \$100.00 per hour. Counsel for Respondent agreed that the time expended and the hourly rate were reasonable. Counsel for Respondent, however, took the position that the facts of this case do not justify an award of attorney's fees to Complainant.

CONCLUSIONS OF LAW

1. The Condominium failed to follow the requirements of Section 11-109(c)(8) with

respect to the 2005 election. As a consequence, the June 7, 2005, meeting did not have a quorum and was not a proper meeting. The election held on June 7, 2005 is invalid.

2. The practice of the Condominium to receive proxies at the outset of the annual meeting does not comply with its By-laws. The By-laws require that proxies be submitted to the secretary prior to the meeting. By-laws, Article IV, Section 8. The normal practice is that a condominium gives a cut off date by which proxies must be submitted. In the notices of the May 4, 2005 meeting, the proxy accompanying the notices stated that proxies must be presented to management no later than 12:00 p.m. on May 3, 2005, the day before the meeting. This is a proper practice, except that it does not give the members an opportunity to submit proxies prior to an adjourned meeting if there is one. In any event, no proxy should be received after a meeting has started, since the By-laws do not allow this.

3. The amount of legal fees billed by Complainant's counsel is fair and reasonable. The panel bases this conclusion in large part upon the manner in which counsel for Complainant presented Complainant's case at the May 10, 2006 hearing.

4. The Condominium was unreasonably uncooperative in providing documents to the
Complainant and the Complainant's lawyer, to which they were entitled by law.

5. With regard to attorney's fees, the panel finds that there is authority under Section 10B-13(d)(1) Montgomery County Code for awarding attorney's fees in the event a party has maintained a dispute other than in good faith. Based upon the testimony and evidence of record, the panel finds that the Condominium presented the Complainant and his attorney with unreasonable difficulties regarding the production of documents, as a result of which his

counsel had to expend more time than might otherwise have been unnecessary to obtain documents to which Complainant was entitled.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is

ORDERED:

1. The Condominium shall conduct an election within sixty (60) days from the effective date of this decision for the Board of Director position for the three-year term filled by Kelly Carter at the June 7, 2005, meeting. That election will be for the remainder of that three-year term.

2. Since the election of Millicent Grant also was invalid, but was for a one-year term,

the Condominium shall certify to the Commission within thirty (30) days from the effective date of this decision the results of the 2006 Board election for that one-year director position. Complainant will have an opportunity to examine the results, including all proxies and ballots submitted in connection with that election. If it should appear that the one-year term was properly filled in the 2006 election, then the issue regarding the 2005 Board election for the one-year term is moot. However, if the one-year term was not properly filled at the 2006 election, then there also shall be an election to fill the remainder of this one-year term at the same time as the election for the remainder of the three-year term.

3. The Condominium shall cease the practice of accepting proxies after the annual meeting has started.

4. The Condominium shall institute election procedures and distribute them to the members within twenty (20) days from the date of this order which will include at least the

following:

a. Procedures for accepting proxies, including the time by which proxies must be submitted and a procedure for submitting proxies subsequent to a first meeting if that meeting is adjourned and a second meeting must be called due to lack of a quorum.

b. Procedures for appointing an election committee and for having the election committee give a formal report of the results of election, including the number of persons present in person or by proxy, the number of votes or proxies not allowed for whatever reason, including but not limited to failure to fill out forms properly or the existence of a lien against the member's property for delinquent assessments.

c. A form of notice that complies with Section 11-109(c)(8), Real Property.

5. Persons may be prohibited from voting in Board elections only if a lien is filed against their units in the land records before the meeting at which they are to vote.

6. Pursuant to Section 10B-13(d) Montgomery County Code the panel also requires the

Condominium shall pay to the Complainant the entire filing fee for filing his complaint.

7. The panel awards Complainant \$250.00 in attorney's fees to be paid within 30 days

from the effective date of this order.

8. The Condominium shall deliver a copy of this Memorandum Decision and Order to each unit owner within thirty (30) days from the effective date of this decision.

Panel Members Kevin Gannon, Vicki Vergagni, and John F. McCabe, Jr. all concurred in this Memorandum Decision and Order.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of this Order, pursuant to the Maryland Rules of Procedures governing administrative appeals.

_____. John F. McCabe, Jr., Panel Chair